Week 11 – Privacy and the law

Lecturer: Sue Foster

Housekeeping

Your final exam paper will be worth 80 marks and includes:
- A compulsory question worth 25 marks
- 4 short answer questions worth 10 marks each = 40 marks
  - You will need to write about two thirds of a page on each topic minimum and include ALL relevant information to gain full marks
- 5 definitions worth 3 marks each = 15 marks
  - You will need to write about four to five sentences
  - Include all relevant information that relates to the key word you are defining

Learning outcomes

- Understand the need for privacy of personal information
- Describe the different privacy laws in use in Australia
- Discuss the different issues that impact on privacy of personal information
- Describe the issues that affect privacy of information on a global basis


Survey results:
- Australians regard privacy as a closely held and highly personal value
- People look for signals that an organisation will manage their personal information:
  - 59% - said they would trust an organisation more if it gave them control over how their information was to be used
  - 55% - said organisations with privacy policies would be more likely to gain their trust

State Slips Up On Security  
(May, 2003 The Age)

A report released by the Victorian Auditor-General examined a sample of four Victorian agencies:

- The report said that the findings are indicative of security exposures
  - Email:
    - Antivirus software all but three agencies had inadequate protection
    - Infrequent to no updates
    - Lack of protective software on servers
    - Failure to scan attachments (in one case)
  - Some Back up plans but disaster recovery plans were inadequate for email and internet use

Victorian Opposition spokesman on technology said the report raised questions about the Government’s handling of online services that meant one would be “excused for deciding not to use the electronic services provided by government departments and agencies.”

Privacy

Privacy

Privacy Dimensions

- Privacy of the person
- Privacy of personal behavior
- Privacy of personal communications
- Privacy of personal data
  - “The ‘claim of individuals, groups, or institutions to determine for themselves when, and to what extent, information about them is communicated to others’”

The questions to be raised are:

- What information is stored?
- Who has access to it?
- Who owns the information?
- How is the information used?

The major dilemma facing society is the conflict between the need for private and government agencies to keep information for the common good versus the rights of the individual to be left alone.
Privacy Issues

- Both Government and private organisations are increasingly automating the processing of personal information without the consent or knowledge of the individuals affected.
- Personal information is sometimes used legitimately - social security abuses - fraud, improperly accessed
- Internet is promoted as a self regulatory body

Related: http://www.export.gov/safeharbor/SHPRINCIPLESFINAL.htm

Privacy Protection

Privacy Protection is a process of finding appropriate balances between privacy and multiple competing interests.

2 Rules
- The right of privacy is not absolute. Privacy must be balanced against the needs of society.
- The public’s right to know is superior to the individual’s right of privacy

Confidentiality is the legal duty of individuals who come into the possession of information about others, especially in the course of particular kinds of relationships with them.

Privacy Research

Australia
44% of respondents were concerned with privacy issues relating to online services.
71.8% of respondents said that they checked privacy policies before purchasing goods online and 65% said they wouldn’t go ahead with an online order if the site did not have a privacy policy.

27% of projected eCommerce revenues could be lost due to consumer privacy concerns
37% of online consumers said they would buy more if privacy was not an issue
34% of consumers said that they would start buying online if privacy was not an issue
54% believe that government should regulate online privacy

Information Sheet 6 – 2001

Security And Personal Information

National Privacy Principle (NPP) 4.1
- provides that an organisation must take reasonable steps to protect the personal information it holds from
  - misuse and loss and from
  - unauthorised access,
  - modification or
  - Disclosure
General Principles

<table>
<thead>
<tr>
<th>NPP</th>
<th>Privacy Principle</th>
<th>Area of Regulation</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Collection</td>
<td>Manner of collection and notice to be given</td>
</tr>
<tr>
<td>2</td>
<td>Use and disclosure</td>
<td>Restrictions on use and disclosure for secondary purposes</td>
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<tr>
<td>3</td>
<td>Quality</td>
<td>Maintenance of data currency and accuracy</td>
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<tr>
<td>4</td>
<td>Security</td>
<td>Protection from unauthorised access, modification and disclosure</td>
</tr>
<tr>
<td>5</td>
<td>Openness</td>
<td>Provision of policy and other information</td>
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<tr>
<td>6</td>
<td>Access and Correction</td>
<td>Provision of access for individuals to their personal information</td>
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<tr>
<td>7</td>
<td>Identifiers</td>
<td>Manner of organisational use of identifiers</td>
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<td>8</td>
<td>Anonymity</td>
<td>Preservation of option to remain anonymous</td>
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<tr>
<td>9</td>
<td>Transborder data flows</td>
<td>Conditions on transferring personal information outside Australia</td>
</tr>
<tr>
<td>10</td>
<td>Sensitive information</td>
<td>Conditions on collection and handling of sensitive personal information</td>
</tr>
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</table>

Privacy protection

- **Privacy Legislation**
  - **Commonwealth**
    - Privacy Amendment Act (Private Sector) 2000
    - Amended Privacy Act 1988 – inclusive of private sector
    - Privacy Act 1988
    - Provides broad principles
    - Privacy Amendment Act 1990
      - Covers credit reporting
    - Data Matching Program Act 1990
      - This act enables government agencies and departments to match information on individuals.
    - Freedom of Information Act 1982
    - Australian Tax Act (& numerous amendments)
    - Australian Securities Commission Act 1989

- **Privacy Amendment (Private Sector) Act 2000**
  - Website operators collecting personal information online must take reasonable steps to ensure that internet users know:
    - Who is collecting the information
    - How it is used and stored and disclosed
    - Issue - Data security and encryption
  - Allow people to access their records and to correct those records if they are wrong

- **Privacy Amendment (Private Sector) Act 2000**
  - Organisations:
    - Protect personal information they hold from unauthorised access and disclosure
    - Make public their policy on privacy – privacy statement
  - Encouraging IT developments while protecting personal information
  - Designed to regulate “spamming”
Privacy Act 1988

- Protects the way personal information is handled by private sector organisations and government agencies
- Covers:
  - The collection
  - Use
  - Disclosure
  - Quality
  - Security of personal information
- Allows individuals the right to access and correct their data
- Provides rules for making a complaint using a free account to the: privacycommissioner@hushmail.com (www.privacy.gov.au)

How is Private Information Collected?

- Reading your newsgroups’ postings
- Finding you in the Internet Directory
- browser records information about you
  - Cookies
- Reading your e-mail
- Web Registration

Web-Site Self-Registration

- Registration Questionnaires
  - type in private information in order to receive a password to participate in a lottery, to receive information, or to play a game
- Uses of the Private Information
  - collected for planning by the business
  - may be sold to a third party
  - used in an inappropriate manner

Web Registration Research

- 40% of all users have falsified information when registering online
- 66% of all U.S. and European respondents don’t register as they don’t know how the information is going to be used
- 63% don’t feel that registration is worthwhile considering the content of the sites
- 58% don’t trust the sites collecting this information from them
- 6% always register when requested

Eighth User Survey by GVU (1999)
Lecturer: Sue Foster: Week 11

IMS3110

Cookies

Piece of software that transparently allows a Web site to record one's comings and goings

- Reasons for using cookies
  - to personalize information
  - to improve online sales/services
  - to simplify reading of popular links or demographics
  - to keep sites fresh and relevant to the user's interests
  - to enable subscribers to log in without having to enter a password every visit
  - to keep track of a customer's search preferences
  - personal profiles created are more accurate than self-registration

- Solutions to cookies
  - users can delete cookie files stored in their computer
  - use of anti-cookie software (e.g. Cookie Cutter and Anonymous Cookie)

Key Privacy Issues

- World wide trend for privacy
  - Why??
- Principles of the Privacy Act based on the Organisation for Economic Cooperation and Developments (OECD) Guidelines on the protection of privacy and transborder flows of personal data developed in 1980
- Most European countries have passed laws for public and private sectors based on the OECD principles

OECD Privacy Policy Basics

- Data Collection
  - Data should be collected on individuals only to accomplish a legitimate business objective.
  - Data should be adequate, relevant, and not excessive in relation to the business objective.
  - Individuals must give their consent before data pertaining to them can be gathered.

- Data Accuracy
  - Sensitive data gathered on individuals should be verified before it is entered into the database.
  - Data should be accurate and where and when necessary, kept current.
  - The file should be made available so the individual can ensure that the data are correct.
  - If there is disagreement about the accuracy of the data, the individual's version should be noted and included with any disclosure of the file.

- Data Confidentiality
  - Computer security procedures should be implemented to provide reasonable assurance against unauthorized disclosure of data.
  - Third parties should not be given access to data without the individual's knowledge or permission, except as required by law.
  - Disclosures of data, other than the most routine, should be noted and maintained for as long as the data are maintained.
  - Data should not be disclosed for reasons incompatible with the business objective for which they are collected.

DOW JONES v GUTNICK
cyberspace and libel!!

- Joe Gutnick sues media group Dow Jones (USA) under Australian libel laws in Melbourne
- HISTORY:
  - an article was downloaded by 140 Australians from a Dow Jones website (Melbourne) rather than in the US where the article was written
- LEGAL RULING
  - any internet publisher can now be sued for libel if the article relates to an Australian identity and can be downloaded here ignoring the fact that the article may not have contravened the libel laws of the country in which it was written or from which it was transmitted.
Shortcomings of Existing Legal Remedies

- Existing laws protect consumers within Australia
  - *Trade Practices Act 1974*
    - However, a certain activity that may be illegal in Australia, for instance, may not be in the country in which a trader, engaging in activities with an Australian consumer, is located.
- Jurisdiction
  - Which country has jurisdiction to hear the case (trader or consumer).
  - Can papers be served if a global trader.
- Choice of law
  - Difference may occur between countries
- Enforcement

Trade Practices Act

- Regulates business dealings with consumers
  - "A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or likely to mislead or deceive"
- Applies to
  - Australia businesses conducting business inside and outside of Australia.
  - Australian citizens or persons ordinarily resident in Australia
- Place restrictions on the collection, storage, disclosure and use of personal information by government bodies and non-government bodies.

Problems

- disproportionately high costs (e.g., international telephone calls, costs of witnesses’ attendances);
- long delays;
- a lack of familiarity with the foreign legal system;
- the thought of pursuing legal action internationally may be too intimidating;
- language difficulties;
- differences in custom;
- time differences;
- lack of awareness of rights in foreign jurisdictions;
- the probability of success is unpredictable; and
- many consumers cannot afford to pursue the matter in court (most consumers are ineligible for legal aid).

Issues to be Explored

- how can national enforcement agencies more effectively protect the interests of global consumers, through improved enforcement and compliance strategies;
- cooperation between national enforcement agencies and international business and consumer organisations;
- consumer education from government, industry and consumer sources, and how consumers can avoid the ever-growing number of international scams targeted at them;
- the role of industry in the provision of consumer protection mechanisms, and how ethical traders can be encouraged to take self-regulatory action to ensure that the interests of consumers are protected;
- government intervention; and
- the harmonisation of international rules and standards.
OBJECTIVES

The aims of this Code include:

(a) establish confidence in and encourage the use of the Internet.
(b) to support systems for the classification of content on and management of access to content on the Internet.
(c) to improve the fairness and accuracy of disclosure to users of the Internet and the community in general.
(d) to provide standards of confidentiality and privacy afforded to users of the Internet.
(e) to provide a transparent mechanism for complaint handling for the Internet industry.
(f) to improve user relations by the Internet industry.

Conclusion

Unfortunately privacy of personal information is difficult to control due to lack of education and poor security controls.

Individuals have a duty of care to protect their information by educating themselves but organisations must also be held accountable to protect the information that is held by them.

REFERENCES

- http://www.privacy.gov.au
- http://www.law.gov.au
- ACS Code of Ethics
- ACS Code of Professional conduct
- Please Note: Many of the references are unavailable on this site.
- MailFrontier. Stop email fraud before it stops you. Retrieved on 1 October 2004, located at: